724 Phil. 534

FIRST DIVISION

[G.R. No. 191498, January 15, 2014]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MINDANAO II GEOTHERMAL PARTNERSHIP, RESPONDENT.

D E C I S I O N

SERENO, C.J.:

This Rule 45 Petition[1] requires this Court to address the question of timeliness with respect to petitioner's administrative and judicial claims for refund and credit of accumulated unutilized input Value Added Tax (VAT) under Section 112(A) and Section 112(D) of the 1997 Tax Code.

Petitioner Mindanao II Geothermal Partnership (Mindanao II) assails the Decision[2] and Resolution[3] of the Court of Tax Appeals *En Banc* (CTA *En Banc*) in CTA *En Banc* Case No. 448, affirming the Decision in CTA Case No. 7507 of the CTA Second Division.[4] The latter ordered the refund or issuance of a tax credit certificate in the amount of P6,791,845.24 representing unutilized input VAT incurred for the second, third, and fourth quarters of taxable year 2004 in favor of herein respondent, Mindanao II.

FACTS

Mindanao II is a partnership registered with the Securities and Exchange Commission.[5] It is engaged in the business of power generation and sale of electricity to the National Power Corporation (NAPOCOR)[6] and is accredited by the Department of Energy.[7]

Mindanao II filed its Quarterly VAT Returns for the second, third and fourth quarters of taxable year 2004 on the following dates:[8]

Date filed		Quarter	Taxable Year
Original	Amended		
26 July 2004	12 July 2005	2nd	2004
22 October 2004	12 July 2005	3rd	2004
25 January 2005	12 July 2005	4th	2004

On 6 October 2005, Mindanao II filed with the Bureau of Internal Revenue (BIR) an application for the refund or credit of accumulated unutilized creditable input taxes.[9] In support of the administrative claim for refund or credit, Mindanao II alleged, among others, that it is registered with the BIR as a value-added taxpayer[10] and all its sales are zero-rated under the EPIRA law.[11] It further stated that for the second, third, and fourth quarters of taxable year 2004, it paid input VAT in the aggregate amount of P7,167,005.84, which were directly attributable to the zero-rated sales. The input taxes had not been applied against output tax.

Pursuant to Section 112(D) of the 1997 Tax Code, the Commissioner of Internal Revenue (CIR) had a period of 120 days, or until 3 February 2006, to act on the claim. The administrative claim, however, remained unresolved on 3 February 2006.

Under the same provision, Mindanao II could treat the inaction of the CIR as a denial of its claim, in which case, the former would have 30 days to file an appeal to the CTA, that is, on 5 March 2006. Mindanao II, however, did not file an appeal within the 30-day period.

Apparently, Mindanao II believed that a judicial claim must be filed within the two-year prescriptive period provided under Section 112(A) and that such time frame was to be reckoned from the filing of its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, that is, *from 26 July 2004, 22 October 2004, and 25 January 2005, respectively*. Thus, on 21 July 2006, Mindanao II, claiming inaction on the part of the CIR and that the two-year prescriptive period was about to expire, filed a Petition for Review with the CTA docketed as CTA Case No. 6133.[12]

On 8 June 2007, while the application for refund or credit of unutilized input VAT of Mindanao II was pending before the CTA Second Division, this Court promulgated *Atlas Consolidated Mining and Development Corporation v. CIR*[13] (Atlas). Atlas held that the two-year prescriptive period for the filing of a claim for an input VAT refund or credit is to be reckoned from the date of filing of the corresponding **quarterly VAT return and payment of the tax**.

On 12 August 2008, the CTA Second Division rendered a Decision[14] ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of P6,791,845.24, representing unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2004.[15]

In support of its ruling, the CTA Second Division held that Mindanao II complied with the twin requisites for VAT zero-rating under the EPIRA law: *first*, it is a generation company, and *second*, it derived sales from power generation. It also ruled that Mindanao II satisfied the requirements for the grant of a refund/credit under Section 112 of the Tax Code: (1) there must be zero-rated or effectively zero-rated sales; (2) input taxes must have been incurred or paid; (3) the creditable input tax due or paid must be attributable to zero-rated sales or effectively zero-rated sales; (4) the input VAT payments must not have been applied against any output liability; and (5) the claim must be filed within the two-year prescriptive period.[16]

As to the second requisite, however, the input tax claim to the extent of ?375,160.60 corresponding to purchases of services from

Mitsubishi Corporation was disallowed, since it was not substantiated by official receipts.[17]

As regards to the fifth requirement in section 112 of the Tax Code, the tax court, citing *Atlas*, counted from 26 July 2004, 22 October 2004, and 25 January 2005 – *the dates when Mindanao II filed its Quarterly VAT Returns for the second, third, and fourth quarters of taxable year 2004, respectively* – and determined that both the administrative claim filed on 6 October 2005 and the judicial claim filed on 21 July 2006 fell within the two-year prescriptive period.[18]

On 1 September 2008, the CIR filed a Motion for Partial Reconsideration,[19] pointing out that prescription had already set in, since the appeal to the CTA was filed only on 21 July 2006, which was way beyond the last day to appeal – 5 March 2006.[20] As legal basis for this argument, the CIR relied on Section 112(D) of the 1997 Tax Code.[21]

Meanwhile, on 12 September 2008, this Court promulgated *CIR v. Mirant Pagbilao Corporation (Mirant)*.[22] Mirant fixed the reckoning date of the two-year prescriptive period for the application for refund or credit of unutilized input VAT at the **close of the taxable quarter when the relevant sales were made**, as stated in Section 112(A).[23]

On 3 December 2008, the CTA Second Division denied the CIR's Motion for Partial Reconsideration.[24] The tax court stood by its reliance on Atlas[25] and on its finding that both the administrative and judicial claims of Mindanao II were timely filed.[26]

On 7 January 2009, the CIR elevated the matter to the CTA En Banc via a Petition for Review.[27] Apart from the contention that the judicial claim of Mindanao II was filed beyond the 30-day period fixed by Section 112(D) of the 1997 Tax Code,[28] the CIR argued that Mindanao II erroneously fixed 26 July 2004, the date when the return for the second quarter was filed, as the date from which to reckon the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT under Section 112(A). As the two-year prescriptive period ended on 30 June 2006, the Petition for Review of Mindanao II was filed out of time on 21 July 2006.[29] The CIR invoked the recently promulgated Mirant to support this theory.

On 11 November 2009, the CTA *En Banc* rendered its Decision denying the CIR's Petition for Review.[30] On the question whether the application for refund was timely filed, it held that the CTA Second Division correctly applied the *Atlas ruling*.[31] It reasoned that *Atlas* remained to be the controlling doctrine. *Mirant* was a new doctrine and, as such, the latter should not apply retroactively to Mindanao II who had relied on the old doctrine of *Atlas* and had acted on the faith thereof.[32]

As to the issue of compliance with the 30-day period for appeal to the CTA, the CTA En Banc held that this was a requirement only when the CIR actually denies the taxpayer's claim. But in cases of CIR inaction, the 30-day period is not a mandatory requirement; the judicial claim is seasonably filed as long as it is filed after the lapse of the 120-day waiting period but within two years from the date of filing of the return.[33]

The CIR filed a Motion for Partial Reconsideration[34] of the Decision, but it was denied for lack of merit.[35]

Dissatisfied, the CIR filed this Rule 45 Petition, raising the following arguments in support of its appeal:

I.

THE CTA 2ND DIVISION LACKED JURISDICTION TO TAKE COGNIZANCE OF THE CASE.

II.

THE COURT A QUO'S RELIANCE ON THE RULING IN ATLAS IS MISPLACED.[36]

Issues

The resolution of this case hinges on the question of compliance with the following time requirements for the grant of a claim for refund or credit of unutilized input VAT: (1) the two-year prescriptive period for filing an application for refund or credit of unutilized input VAT; and (2) the 120+30 day period for filing an appeal with the CTA.

THE COURT'S RULING

We deny Mindanao II's claim for refund or credit of unutilized input VAT on the ground that its judicial claims were filed out of time, even as we hold that its application for refund was filed on time.

I.
MINDANAO II'S APPLICATION FOR REFUND WAS FILED ON TIME

We find no error in the conclusion of the tax courts that the application for refund or credit of unutilized input VAT was timely filed. The problem lies with their bases for the conclusion as to: (1) what should be filed within the prescriptive period; and (2) the date from which to reckon the prescriptive period.

We thus take a different route to reach the same conclusion, initially focusing our discussion on what should be filed within the two-year prescriptive period.

A. The Judicial Claim Need Not Be Filed Within the Two-Year Prescriptive Period

Section 112(A) provides:

> SEC. 112. Refunds or Tax Credits of Input Tax. —
>
> (A) Zero-rated or Effectively Zero-rated Sales — Any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales**, except transitional input tax, to the extent that such input tax has not been applied against output tax: Provided, however, That in the case of zero-rated sales under Section 106(A)(2)(a)(1), (2) and (B) and Section 108(B)(1) and (2), the acceptable foreign currency exchange proceeds thereof had been duly accounted for in accordance with the rules and regulations of the Bangko Sentral ng Pilipinas (BSP): Provided, further, That where the taxpayer is engaged in zero-rated or effectively zero-rated sale and also in taxable or exempt sale of goods or properties or services, and the amount of creditable input tax due or paid cannot be directly and entirely attributed to any one of the transactions, it shall be allocated proportionately on the basis of the volume of sales.

Both the CTA Second Division and CTA *En Banc* decisions held that the phrase "apply for the issuance of a tax credit certificate or refund" in Section 112(A) is construed to refer to both the administrative claim filed with the CIR and the judicial claim filed with the CTA. This view, however, has no legal basis.

In *Commissioner of Internal Revenue v. Aichi Forging Company of Asia, Inc. (Aichi)*, we dispelled the misconception that **both the administrative and judicial claims** must be filed within the two-year prescriptive period:[37]

> There is nothing in Section 112 of the NIRC to support respondent's view. Subsection (A) of the said provision states that "any VAT-registered person, whose sales are zero-rated or effectively zero-rated may, within two years after the close of the taxable quarter when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales." **The phrase "within two (2) years x x x apply for the issuance of a tax credit certificate or refund" refers to applications for refund/credit filed with the CIR and not to appeals made to the CTA**. This is apparent in the first paragraph of subsection (D) of the same provision, which states that the CIR has "120 days from the submission of complete documents in support of the application filed in accordance with Subsections (A) and (B)" within which to decide on the claim.
>
> In fact, applying the two-year period to judicial claims would render nugatory Section 112 (D) of the NIRC, which already provides for a specific period within which a taxpayer should appeal the decision or inaction of the CIR. The second paragraph of Section 112 (D) of the NIRC envisions two scenarios: (1) when a decision is issued by the CIR before the lapse of the 120-day period; and (2) when no decision is made after the 120-day period. In both instances, the taxpayer has 30 days within which to file an appeal with the CTA. As we see it then, the 120-day period is crucial in filing an appeal with the CTA. (Emphasis supplied)

The message of *Aichi* is clear: it is only the administrative claim that must be filed within the two-year prescriptive period; the judicial claim need not fall within the two-year prescriptive period.

Having disposed of this question, we proceed to the date for reckoning the prescriptive period under Section 112(A).

B. Reckoning Date is the Close of the Taxable Quarter When the Relevant Sales Were Made.

The other flaw in the reasoning of the tax courts is their reliance on the *Atlas* ruling, which fixed the reckoning point to the date of filing the return and payment of the tax.

The CIR's Stand

The CIR's stand is that *Atlas* is not applicable to the case at hand as it involves Section 230 of the 1977 Tax Code, which contemplates recovery of tax payments *erroneously or illegally* collected. On the other hand, this case deals with claims for tax refund or credit of unutilized input VAT for the second, third, and fourth quarters of 2004, which are covered by Section 112 of the 1977 Tax Code.[38]

The CIR further contends that Mindanao II cannot claim good faith reliance on the *Atlas* doctrine since the case was decided only on 8 June 2007, two years after Mindanao II filed its claim for refund or credit with the CIR and one year after it filed a Petition for Review with the CTA on 21 July 2006.[39]

In lieu of *Atlas*, the CIR proposes that it is the Court's ruling in *Mirant* that should apply to this case despite the fact that the latter was promulgated on 12 September 2008, **after** Mindanao II had filed its administrative claim in 2005.[40] It argues that *Mirant* can be applied retroactively to this case, since the decision merely interprets Section 112, a provision that was already effective when Mindanao II filed its claims for tax refund or credit.

The Taxpayer's Defense

On the other hand, Mindanao II counters that Atlas, decided by the Third Division of this Court, could not have been superseded by Mirant, a Second Division Decision of this Court. A doctrine laid down by the Supreme Court in a Division may be modified or reversed only through a decision of the Court sitting *en banc*.[41]

Mindanao II further contends that when it filed its Petition for Review, the prevailing rule in the CTA reckons the two-year prescriptive period from the date of the filing of the VAT return.[42]

Finally, after building its case on *Atlas*, Mindanao II assails the CIR's reliance on the *Mirant* doctrine stating that it cannot be applied retroactively to this case, lest it violate the rock-solid rule that a judicial ruling cannot be given retroactive effect if it will impair vested rights.[43]

Section 112(A) is the Applicable Rule

The issue posed is not novel. In the recent case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[44] *(San Roque)*, this Court resolved the threshold question of when to reckon the two-year prescriptive period for filing an administrative claim for refund or credit of unutilized input VAT under the 1997 Tax Code in view of our pronouncements in *Atlas* and *Mirant*. In that case, we delineated the scope and effectivity of the *Atlas* and *Mirant* doctrines as follows:

> The Atlas doctrine, which held that claims for refund or credit of input VAT must comply with the two-year prescriptive period under Section 229, should be **effective only from its promulgation on 8 June 2007 until its abandonment on 12 September 2008 in *Mirant***. The *Atlas* doctrine was limited to the reckoning of the two-year prescriptive period from the date of payment of the output VAT. **Prior to the *Atlas* doctrine, the two-year prescriptive period for claiming refund or credit of input VAT should be governed by Section 112(A) following the verba legis rule**. The *Mirant* ruling, which abandoned the *Atlas* doctrine, adopted the *verba legis* rule, thus applying Section 112(A) in computing the two-year prescriptive period in claiming refund or credit of input VAT. (Emphases supplied)

Furthermore, *San Roque* distinguished between Section 112 and Section 229 of the 1997 Tax Code:

> The input VAT is not "excessively" collected as understood under Section 229 because at the time the input VAT is collected the amount paid is correct and proper. The input VAT is a tax liability of, and legally paid by, a VAT-registered seller of goods, properties or services used as input by another VAT-registered person in the sale of his own goods, properties, or services. This tax liability is true even if the seller passes on the input VAT to the buyer as part of the purchase price. The second VAT-registered person, who is not legally liable for the input VAT, is the one who applies the input VAT as credit for his own output VAT. If the input VAT is in fact "excessively" collected as understood under Section 229, then it is the first VAT-registered person — the taxpayer who is legally liable and who is deemed to have legally paid for the input VAT — who can ask for a tax refund or credit under Section 229 as an ordinary refund or credit outside of the VAT System. In such event, the second VAT-registered taxpayer will have no input VAT to offset against his own output VAT.
>
> In a claim for refund or credit of "excess" input VAT under Section 110(B) and Section 112(A), the input VAT is not "excessively" collected as understood under Section 229. At the time of payment of the input VAT the amount paid is the correct and proper amount. Under the VAT System, there is no claim or issue that the input VAT is "excessively" collected, that is, that the input VAT paid is more than what is legally due. The person legally liable for the input VAT cannot claim that he overpaid the input VAT by the mere existence of an "excess" input VAT. The term "excess" input VAT simply means that the input VAT available as credit exceeds the output VAT, not that the input VAT is excessively collected because it is more than what is legally due. Thus, the taxpayer who legally paid the input VAT cannot claim for refund or credit of the input VAT as "excessively" collected under Section 229.
>
> Under Section 229, the prescriptive period for filing a judicial claim for refund is two years from the date of payment of the tax "erroneously, . . . illegally, . . . excessively or in any manner wrongfully collected." The prescriptive period is reckoned from the date the person liable for the tax pays the tax. Thus, if the input VAT is in fact "excessively" collected, that is, the person liable for the tax actually pays more than what is legally due, the taxpayer must file a judicial claim for refund within two years from his date of payment. Only the person legally liable to pay the tax can file the judicial claim for refund. The person to whom the tax is passed on as part of the purchase price has no personality to file the judicial claim under Section 229.
>
> Under Section 110(B) and Section 112(A), the prescriptive period for filing a judicial claim for "excess" input VAT is two years from the close of the taxable quarter when the sale was made by the person legally liable to pay the output VAT. This prescriptive period has no relation to the date of payment of the "excess" input VAT. The "excess" input VAT may have been paid for more than two years but this does not bar the filing of a judicial claim for "excess" VAT under Section 112(A), which has a different reckoning period from Section 229. Moreover, the person claiming the refund or credit of the input VAT is not the person who legally paid the input VAT. Such person seeking the VAT refund or credit does not claim that the input VAT was "excessively" collected from him, or that he paid an input VAT that is more than what is legally due. He is not the taxpayer who legally paid the input VAT.
>
> As its name implies, the Value-Added Tax system is a tax on the value added by the taxpayer in the chain of transactions. For simplicity and efficiency in tax collection, the VAT is imposed not just on the value added by the taxpayer, but on the entire selling price of his goods, properties or services. However, the taxpayer is allowed a refund or credit on the VAT previously paid by those who sold him the inputs for his goods, properties, or services. The net effect is that the taxpayer pays the VAT only on the value that he adds to the goods, properties, or services that he actually sells.
>
> Under Section 110(B), a taxpayer can apply his input VAT only against his output VAT. The only exception is when the taxpayer is expressly "zero-rated or effectively zero-rated" under the law, like companies generating power through renewable sources of energy. Thus, a non zero-rated VAT-registered taxpayer who has no output VAT because he has no sales cannot claim a tax refund or credit of his unused input VAT under the VAT System. Even if the taxpayer has sales but his input VAT exceeds his output VAT, he cannot seek a tax refund or credit of his "excess" input VAT under the VAT System. He can only carry-over and apply his "excess" input VAT against his future output VAT. If such "excess" input VAT is an "excessively" collected tax, the taxpayer should be able to seek a refund or credit for such "excess" input VAT whether or not he has output VAT. The VAT System does not allow such refund or credit. Such "excess" input VAT is not an "excessively" collected tax under Section 229. The "excess" input VAT is a correctly and properly collected tax. However, such "excess" input VAT can be applied against the output VAT because the VAT is a tax imposed only on the value added

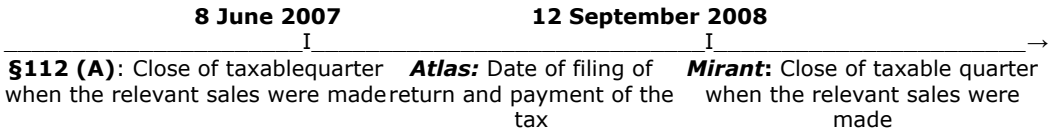
by the taxpayer. If the input VAT is in fact "excessively" collected under Section 229, then it is the person legally liable to pay the input VAT, not the person to whom the tax was passed on as part of the purchase price and claiming credit for the input VAT under the VAT System, who can file the judicial claim under Section 229.

Any suggestion that the "excess" input VAT under the VAT System is an "excessively" collected tax under Section 229 may lead taxpayers to file a claim for refund or credit for such "excess" input VAT under Section 229 as an ordinary tax refund or credit outside of the VAT System. Under Section 229, mere payment of a tax beyond what is legally due can be claimed as a refund or credit. There is no requirement under Section 229 for an output VAT or subsequent sale of goods, properties, or services using materials subject to input VAT.

From the plain text of Section 229, it is clear that what can be refunded or credited is a tax that is "erroneously . . . illegally, . . . excessively or in any manner wrongfully collected." In short, there must be a wrongful payment because what is paid, or part of it, is not legally due. As the Court held in Mirant, Section 229 should "apply only to instances of erroneous payment or illegal collection of internal revenue taxes." Erroneous or wrongful payment includes excessive payment because they all refer to payment of taxes not legally due. Under the VAT System, there is no claim or issue that the "excess" input VAT is "excessively or in any manner wrongfully collected." In fact, if the "excess" input VAT is an "excessively" collected tax under Section 229, then the taxpayer claiming to apply such "excessively" collected input VAT to offset his output VAT may have no legal basis to make such offsetting. The person legally liable to pay the input VAT can claim a refund or credit for such "excessively" collected tax, and thus there will no longer be any "excess" input VAT. This will upend the present VAT System as we know it.[45]

Two things are clear from the above quoted *San Roque* disquisitions. *First*, when it comes to recovery of unutilized input VAT, Section 112, and not Section 229 of the 1997 Tax Code, is the governing law. *Second*, prior to 8 June 2007, the applicable rule is neither *Atlas* nor *Mirant*, but Section 112(A).

We present the rules laid down by *San Roque* in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



Thus, the task at hand is to determine the applicable period for this case.

In this case, Mindanao II filed its administrative claims for refund or credit for the second, third and fourth quarters of 2004 on 6 October 2005. The case thus falls within the first period as indicated in the above timeline. In other words, it is covered by the rule prior to the advent of either Atlas or Mirant.

Accordingly, the proper reckoning date in this case, as provided by **Section 112(A) of the 1997 Tax Code, is the close of the taxable quarter when the relevant sales were made.**

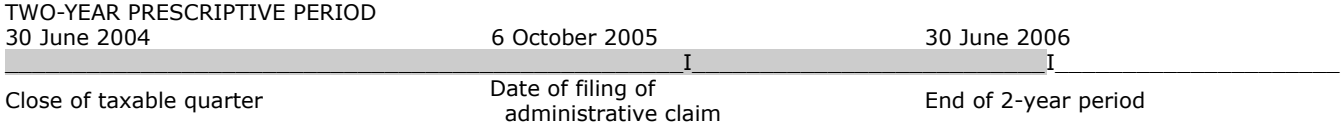
C. The Administrative Claims Were Timely Filed

We sum up our conclusions so far: (1) it is only the administrative claim that must be filed within the two-year prescriptive period; and (2) the two-year prescriptive period begins to run from the close of the taxable quarter when the relevant sales were made.

Bearing these in mind, we now proceed to determine whether Mindanao II's administrative claims for the second, third, and fourth quarters of 2004 were timely filed.

Second Quarter

Since the zero-rated sales were made in the second quarter of 2004, the date of reckoning the two-year prescriptive period is the close of the second quarter, which is on 30 June 2004. Applying Section 112(A), Mindanao II had two years from 30 June 2004, or u**ntil 30 June 2006** to file an administrative claim with the CIR. Mindanao II filed its administrative claim on **6 October 2005**, which is within the two-year prescriptive period. The administrative claim for the second quarter of 2004 was thus timely filed. For clarity, we present the rules laid down by San Roque in determining the proper reckoning date of the two-year prescriptive period through the following timeline:



Third Quarter

As regards the claim for the third quarter of 2004, the two-year prescriptive period started to run on 30 September 2004, the close of the taxable quarter. It ended on 30 September 2006, pursuant to Section 112(A) of the 1997 Tax Code. Mindanao II filed its administrative claim on 6 October 2005. Thus, since the administrative claim was filed well within the two-year prescriptive period, the administrative claim for the third quarter of 2004 was timely filed. (See timeline below)